

DATE

CERTIFIED MAIL NO. 7004 2510 0006 6950 0494

Univar USA, Inc.  
c/o CT Corporation System, Registered Agent  
388 State Street, Suite 420  
Salem, OR 97301-3581

Re: Notice of Violation and Civil Penalty Assessment  
No. LQ/HW-NWR-06-196  
Multnomah County

On June 8 and 12, 2006, the Department of Environmental Quality (the Department) conducted a hazardous waste inspection at the Univar USA, Inc. (Univar) facility at 3950 NW Yeon Boulevard in Portland. During the inspection, Department staff observed two drums of hazardous waste solvent, one of which was dated April 29, 2005, and the other dated October 15, 2005.

Univar is a large-quantity generator of hazardous waste, and by allowing hazardous waste to be stored at its facility for more than 90 days Univar violated Oregon law. As a result of the inspection the Department also determined that Univar had not made a hazardous waste determination on four 55-gallon drums of tank rinseate, generated when a tank of Woodlife F pesticide was emptied, or a 15-gallon container of waste pesticide were hazardous wastes. Failing to perform a hazardous waste determination is also a violation of Oregon law.

Improper management of hazardous wastes threatens public health and the environment. To protect public health and the environment, the legislature has enacted statutes and the Department has adopted rules establishing strict requirements governing the accumulation, storage, handling, treatment, and disposal of hazardous waste. Univar's failure to comply with these rules increases the risk the public or the environment could be harmed by mismanagement of these wastes.

In the enclosed Notice, the Department has assessed a total civil penalty of \$7,400. The Department determined the amount of the penalty using the procedures set forth in Oregon Administrative Rule (OAR) 340-012-0045. The Department's findings and civil penalty determinations are attached to the Notice as Exhibits 1 and 2.

If Univar wishes to dispute the civil penalty, Univar must file a written request for a hearing, along with a written Answer that admits or denies each of the facts alleged in

Sections II and III of the enclosed Notice. In the Answer, Univar should also allege all affirmative defenses and provide reasons why they apply in this matter. Univar will not be allowed to raise these issues at a later time, unless Univar can show good cause for failing to raise them in the Answer.

The steps Univar must follow to request a review of the Department's allegations and determinations in this matter are set forth in Section V of the enclosed Notice and in OAR 340-011-0530 and 137-003-0528. Univar needs to follow the rules to ensure that it does not lose the opportunity to dispute the Department's findings.

If the Department does not receive a request for a hearing and Answer within **twenty** calendar days from the date that Univar receives the enclosed documents, the Department will issue a Default Order and the civil penalty assessment will become final and enforceable. Univar can fax a request for hearing and Answer to the Department at 503-229-6762.

If Univar wishes to discuss this matter, or believes there are mitigating factors the Department might not have considered in assessing the civil penalty, a request for an informal discussion may be attached to the appeal. A request to discuss this matter with the Department does not waive the right to a contested case hearing.

I look forward to Univar's cooperation in complying with Oregon environmental law in the future. If, however, any additional violations occur, Univar may be assessed additional civil penalties.

Copies of referenced rules are enclosed. Also enclosed is a copy of the Department's internal management directive regarding civil penalty mitigation for Supplemental Environmental Projects (SEPs). If Univar is interested in having a portion of the civil penalty fund an SEP, Univar should review the enclosed SEP directive.

If Univar has any questions about the Notice, please contact Jeff Bachman with the Department's Office of Compliance and Enforcement at 503-229-5950 or toll-free at 1-800-452-4011, extension 5950.

Sincerely,

Jane K. Hickman, Administrator  
Office of Compliance and Enforcement

e:\winword\letters\univarltr.doc

Enclosures

cc: Rebecca Paul, Northwest Region, DEQ  
Mike Kortenhof, Northwest Region, DEQ  
Dick Pedersen, Northwest Region, DEQ

Univar USA, Inc.

Case No. LQ/HW-NWR-06-196

Page 3

Land Quality Division, HQ, DEQ

Larry Knudsen, Department of Justice, Portland Office

cc cont'd:      Environmental Protection Agency  
                 Environmental Quality Commission  
                 Multnomah County District Attorney

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF:  
UNIVAR USA, INC.,  
a Washington corporation,

Respondent.

) NOTICE OF VIOLATION AND  
) CIVIL PENALTY ASSESSMENT  
)

) NO. LQ/HW-NWR-06-196  
) MULTNOMAH COUNTY  
) ORD 009227398

I. AUTHORITY

This Notice of Violation and Civil Penalty Assessment (Notice) is issued by the Department of Environmental Quality (Department) to Respondent, Univar USA, Inc., a Washington corporation, pursuant to Oregon Revised Statutes (ORS) 468.126 through 468.140, 466.990; ORS Chapter 183; and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011 and 012.

II. FINDINGS

1. Respondent operates a chemical distribution facility at 3950 NW Yeon Avenue, Portland, Oregon.

2. In 2005, Respondent was a registered large-quantity generator of hazardous waste (Hazardous Waste Generator Identification Number ORD 009227398).

3. Representatives of the Department conducted a compliance inspection at Respondent's facility on June 8 and 12, 2006.

III. VIOLATIONS

Based upon the foregoing findings of fact and above noted inspection, Respondent has violated the following provisions of Oregon's hazardous waste laws and regulations applicable to the facility as set forth in ORS Chapter 466; OAR and Chapter 340, Divisions 100 to 110 and 120, including regulations incorporated in OAR 340-100-0002 adopted pursuant to ORS Chapter 466:

CLASS I VIOLATIONS

1. On each and every day from on or about October 24, 2005, through June 8, 2006, Respondent violated OAR 340-102-0011(2) by failing to make a hazardous waste determination. Specifically, Respondent failed to determine whether four 55-gallon drums of rinseate, generated when a

///

1 tank of Woodlife F pesticide was emptied, and a 15-gallon container of pesticide were hazardous  
2 wastes. These are Class I violations pursuant to OAR 340-012-0068(1)(a).

3 2. On each and every day from on or about July 29, 2005 and from on or about January 15,  
4 2006, through June 12, 2006, Respondent violated 40 Code of Federal Regulations 262.34(a) by storing  
5 hazardous waste longer than 90 days. Specifically, Respondent stored two 55-gallon containers of waste  
6 solvent, an ignitability characteristic hazardous waste (Hazardous Waste Code D001) for more than 90  
7 days. Storage of one container began on April 29, 2005 and continued for 410 days. Storage of the  
8 second container began on October 15, 2005, and continued for 240 days. These are Class I violations  
9 pursuant to OAR 340-012-0068(1)(d).

#### 10 IV. ASSESSMENT OF CIVIL PENALTY

11 The Director imposes a civil penalty for the violations cited in Section III, above, as follows:

| <u>Violation</u> | <u>Penalty Amount</u> |
|------------------|-----------------------|
| 13 1             | \$3,600               |
| 14 2             | \$3,800               |

15 Respondent's total civil penalty is \$7,400. The findings and determination of Respondent's civil  
16 penalty, pursuant to OAR 340-012-0045, are attached and incorporated as Exhibits 1 and 2.

#### 17 V. OPPORTUNITY FOR CONTESTED CASE HEARING

18 Respondent has the right to have a contested case hearing before the Environmental Quality  
19 Commission (Commission) or its hearings officer regarding the matters contained in this Notice,  
20 provided Respondent files a written request for a hearing and an Answer within **twenty (20) calendar**  
21 **days** from the date of service of this Notice. If Respondent fails to file a timely request for a hearing, the  
22 late filing will not be allowed unless the reason for the late filing was beyond Respondent's reasonable  
23 control. If Respondent fails to file a timely Answer, the late filing will not be allowed unless  
24 Respondent can show good cause for the late filing. (*See OAR 340-011-0530 and OAR 137-003-0528*)

25 The request for a hearing must either specifically request a hearing or state that Respondent  
26 wishes to appeal this Notice. In the written Answer, Respondent shall admit or deny each allegation of  
27 fact contained in this Notice, and shall specifically state all affirmative claims or defenses to the

1 assessment of the civil penalty that Respondent may have and the reasoning in support of any claims or  
2 defenses. The contested case hearing will be limited to those issues raised in this Notice and in the  
3 Answer. Unless Respondent is able to show good cause:

- 4 1. Factual matters not disputed in a timely manner shall be presumed to be admitted;
- 5 2. Failure to timely raise a claim or defense will waive the ability to raise that claim or  
6 defense at a later time;
- 7 3. New matters alleged in the Answer will be presumed to be denied by the Department  
8 unless admitted in subsequent pleading or stipulation by the Department or Commission.

9 Send the request for hearing and Answer to: Deborah Nesbit, Oregon Department of  
10 Environmental Quality, 811 S.W. 6th Avenue, Portland, Oregon 97204 or via fax at (503) 229-6762.  
11 Following the Department's receipt of a request for hearing and an Answer, Respondent will be notified  
12 of the date, time and place of the hearing.

13 Failure to file a timely request for hearing or an Answer may result in the entry of a Default  
14 Order for the relief sought in this Notice. Failure to appear at a scheduled hearing may result in an entry  
15 of a Default Order. The Department's case file at the time this Notice was issued may serve as the record  
16 for purposes of entering a Default Order.

#### 17 VI. OPPORTUNITY FOR INFORMAL DISCUSSION

18 In addition to filing a request for a contested case hearing, Respondent may also request an  
19 informal discussion with the Department by attaching a written request to the hearing request and  
20 Answer.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

VII. PAYMENT OF CIVIL PENALTY

The civil penalty is due and payable ten (10) days after the Order imposing the civil penalty becomes final by operation of law or on appeal. Respondent may pay the penalty before that time. Respondent's check or money order in the amount of \$7,400 should be made payable to "State Treasurer, State of Oregon" and sent to the **Business Office, Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204.**

Date

Jane K. Hickman, Administrator  
Office of Compliance and Enforcement

## EXHIBIT 1

### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

**VIOLATION 1:** Failing to perform hazardous waste determinations pursuant to OAR 340-102-0011(2).

**CLASSIFICATION:** These are Class I violations pursuant to OAR 340-012-0068(1)(a).

**MAGNITUDE:** The magnitude of the violations is minor pursuant to OAR 340-012-0135(3)(a)(C) as the violation involved only one waste stream.

**CIVIL PENALTY FORMULA:** The formula for determining the amount of penalty of each violation is:  
$$BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$$

"BP" is the base penalty, which is \$2,000 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(2)(a)(I)(i).

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(16), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 4 pursuant to OAR 340-012-0145(2)(a) and -0145(2)(d)(A)(ii). Respondent has seven Class I equivalent prior significant actions as documented in Case No. HW-NWR-96-329 for an initial "P" value of 8. This value is reduced by 4 because the prior significant actions are more than five years old for a final "P" value of 4.

"H" is Respondent's history of correcting prior significant actions and receives a value of -1 pursuant to OAR 340-012-0145(3)(a)(B), because the violations were uncorrectable and Respondent took reasonable efforts to minimize the effects of the violation.

"O" is whether the violation was repeated or ongoing and receives a value of 4 pursuant to OAR 340-012-0145(4)(a)(D), because the violation continued for more than 28 days.

"M" is the mental state of the Respondent and receives a value of 2 pursuant to OAR 340-012-0145(5)(a)(B), because Respondent's conduct was negligent. As a large-quantity generator of hazardous waste, Respondent is a heavily regulated entity. Respondent has a duty to ascertain and comply with all applicable regulations relating to hazardous waste and hazardous material. Respondent knows of its responsibility to perform hazardous waste determinations on all wastes it generates. Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"C" is Respondent's efforts to correct the violation and receives a value of -1 pursuant to OAR 340-012-0145(6)(a)(C), because the violation was eventually corrected.



"EB" is the approximate economic benefit that an entity gained by not complying with the law. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of 0 because Respondent did not receive a significant economic benefit by failing to timely perform the hazardous waste determination.

PENALTY CALCULATION:

$$\begin{aligned}\text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$2,000 + [(0.1 \times \$2,000) \times (4 + (-)1 + 4 + 2 + (-)1)] + \$0 \\ &= \$2,000 + [(\$200 \times 8)] + \$0 \\ &= \$2,000 + \$1,600 + \$0 \\ &= \$3,600\end{aligned}$$

## EXHIBIT 2

### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

- VIOLATION 2:** Storing hazardous waste longer than 90 days in violation of 40 CFR 262.34(a), adopted pursuant to OAR 340-100-0002.
- CLASSIFICATION:** This is a Class I violation pursuant to OAR 340-012-0068(1)(d).
- MAGNITUDE:** The magnitude of the violation is minor pursuant to OAR 340-012-0135(3)(c)(C) as the violation involved less than 250 gallons of hazardous waste.
- CIVIL PENALTY FORMULA:** The formula for determining the amount of penalty of each violation is:  
$$BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$$
- "BP" is the base penalty, which is \$2,000 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(2)(a)(I)(i).
- "P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(16), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 4 pursuant to OAR 340-012-0145(2)(a) and -0145(2)(d)(A)(ii). Respondent has seven Class I equivalent prior significant actions as documented in Case No. HW-NWR-96-329 for an initial "P" value of 8. This value is reduced by 4 because the prior significant actions are more than five years old for a final "P" value of 4.
- "H" is Respondent's history of correcting prior significant actions and receives a value of -1 pursuant to OAR 340-012-0145(3)(a)(B), because the violations were uncorrectable and Respondent took reasonable efforts to minimize the effects of the violation.
- "O" is whether the violation was repeated or ongoing and receives a value of 4 pursuant to OAR 340-012-0145(4)(a)(D), because the violation continued for more than 28 days.
- "M" is the mental state of the Respondent and receives a value of 2 pursuant to OAR 340-012-0145(5)(a)(B), because Respondent's conduct was negligent. As a large-quantity generator of hazardous waste, Respondent is a heavily regulated entity. Respondent has a duty to ascertain and comply with all applicable regulations relating to hazardous waste and hazardous material. Respondent knows of its responsibility to dispose of hazardous wastes within 90 days, but through inattention allowed the wastes at issue in this violation to accumulate for more than twice the allowable period. Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.
- "C" is Respondent's efforts to correct the violation and receives a value of 0 pursuant to OAR 340-012-0145(6)(a)(D), because the violation or the effects of the violation could not be corrected or minimized.

"EB" is the approximate economic benefit that an entity gained by not complying with the law. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of 0 because Respondent did not receive a significant economic benefit by delaying the cost of transporting the waste to a permitted treatment, storage or disposal facility.

PENALTY CALCULATION:

$$\begin{aligned}\text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$2,000 + [(0.1 \times \$2,000) \times (4 + (-)1 + 4 + 2 + 0)] + \$0 \\ &= \$2,000 + [(\$200 \times 9)] + \$0 \\ &= \$2,000 + \$1,800 + \$0 \\ &= \$3,800\end{aligned}$$